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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 516. 222

HOWARD C. CHAPIN, PLAINTIFF IN ERROR,

vs.

JAMES STREETER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO.

FILED APRIL 27, 1885.

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1 Pleas in the circuit court of the United States for the district of Colorado, sitting at Denver.

Be it remembered that heretofore and on, to wit, the 24th day of July, A. D. 1883, came James Streeter, by Messrs Parsons & Walling, his attorneys, and filed in said court his complaint, and sued out of said court a writ of summons against Howard C. Chapin.

And the said complaint is in words and figures as follows, to wit:

Complaint.

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In the Circuit Court of the United States for the District of Colorado, in the Northern Division

JAMES STREETER, Plaintiff, *vs.* HOWARD C. CHAPIN, Defendant.

The said James Streeter, who is a citizen of the State of Kansas and the plaintiff in this action, complains of the said Howard C. Chapin, who is a citizen of the State of Colorado and the de-

2 fendant herein, and alleges that said plaintiff and said defendant heretofore, to wit, on the 31st day of October, A. D. 1881, at the city of Leadville, in the county of Lake and State of Colorado, made, executed, sealed with their respective seals, and mutually delivered to each other, their certain written instrument of that date, now to the court here shown. The said written instrument was of the tenor and effect and in the words and figures following, to wit:

This agreement, made and entered into this 31st day of October, A. D. 1881, by and between James Streeter, party of the first part, and Howard C. Chapin, party of the second part, both of the city of Leadville, Colorado, witnesseth:

That said Streeter, for and in consideration of the rents reserved, and the covenants, promises, and agreements hereinafter mentioned on the part and behalf of said Chapin to be paid, kept, and performed, and of the guaranty contract hereto attached, hath demised, let, and leased, and by these presents doth demise, let, and lease, unto said Chapin an undivided half of lots numbers ten (10), eleven (11), and twelve (12), in block number one (1), in the Leadville Improvement Company's addition to the town (now city) of Leadville, in the county of Lake, in the State of Colorado, and the buildings thereon situate, including the Clarendon hotel, and of all the hotel furniture therein, for a term of two years from and commenc-

3 ing on the first day of November, A. D. 1881:

To have and to hold the same unto said Chapin from said first day of November, A. D. 1881, for and during said term of two years then next ensuing, said Chapin yielding and paying for the same unto the said Streeter, his executors, administrators, and assigns, and said Streeter hereby reserves as rent therefor the sum of $18,000.00, payable in sums, installments, and at times as hereinafter specified.

And said Chapin, in consideration of the making of this agreement by the said Streeter, hereby covenants, promises, and agrees to and with said Streeter that he, said Chapin, shall and will pay unto him, said Streeter, his executors, administrators, and assigns, as rent for the use during said term of the property so leased as aforesaid, the sum of eight hundred thirty-three and one-third dollars ($833\frac{1}{3}$), in advance, on the first day of each month during the first year of said term, and the sum of ($666\frac{2}{3}$) six hundred and sixty-six and two-thirds dollars, in advance, on the first day of each month during the second year of said term, in sums, installments, and at times as follows, to wit, the sum of eight hundred and thirty-three and one-third dollars ($833\frac{1}{3}$) on the first day of November, A. D. 1881, and the same amount—that is, eight hundred thirty-three and one-third ($833\frac{1}{3}$), on the first day of each of the following-named months, respectively, namely, on the first day of December, A. D. 1881, the first days of January, February, March, April, May,
4 June, July, August, September, and October, A. D. 1882, and the sum of six hundred sixty-six and two-thirds dollars ($666\frac{2}{3}$) on the first day of November, A. D. 1882, and the same amount—that is, six hundred sixty-six and two-thirds dollars ($666\frac{2}{3}$) on the first day of each of the following-named months, respectively, namely, on the first day of December, A. D. 1882, the first days of January, February, March, April, May, June, July, August, September, and October, A. D. 1883.

And that he, said Chapin, shall and will, on the expiration of said term, yield up and deliver the aforesaid undivided half of the property aforesaid so leased to him, as above shown, to said Streeter in as good order and condition as the same are now in, loss by fire or unavoidable accident and ordinary wear excepted, and that the said Chapin shall and will keep the premises and hotel furniture aforesaid in good repair during said term at his own expense, and that he will not underlet said premises or furniture, or any thereof, or any part or portion of the same, or assign this lease, or any portion thereof, without the written consent of said Streeter first had and obtained, and that he will not use or permit said premises or furniture, or any thereof, to be used for any purpose prohibited by or contrary to the laws of the United States or of the State of Colorado.

And it is further hereby agreed by and between the parties hereto that if the rent aforesaid, or any part thereof, or any or either of the above-mentioned sums of money, or any part thereof, shall
5 be or become behind or unpaid, or remain overdue on the day of the payment whereon the same ought to be paid, as aforesaid, or, if default shall be made in any of the covenants, promises, or agreements herein contained to be kept, done, or performed by said Chapin, then it shall and may be lawful for said Streeter, his heirs, agent, attorney, or assigns, at either his or their election, to end said term, and into the said premises or any part thereof, either with or without process of law to re-enter, and said Chapin and any other person or persons occupying in or upon the same to expel, remove, and put out, using such force as may be necessary in so doing, and the aforesaid undivided half of said

premises and of the furniture aforesaid again to repossess and enjoy, as in his first and former estate; and if at any time said term shall be ended, at such election or otherwise, and at the termination thereof, said Chapin does hereby covenant and agree to and with said Streeter to surrender and deliver up the aforesaid undivided half of the premises and furniture aforesaid to said Streeter, his heirs and assigns, immediately upon the termination of said term; and if said Chapin shall remain in possession of the same, or after such default, or after the termination of said term, he and all persons claiming under him shall at the election of said Streeter, his heirs or assigns, be deemed guilty of a forcible detainer of said undivided half of the premises aforesaid, and subject to eviction and removal therefrom, and from the possession of the undivided half of the
6 furniture aforesaid, forcibly or otherwise, with or without, process of law, at the election of said Streeter, his heirs or assigns.

And it is further hereby agreed by and between the parties hereto that said Chapin shall and will, at the expiration of said term, have and replace the furniture aforesaid, including all linen and the beds and bedding in said hotel, in as good condition as the same are now in, and as the same wears or becomes destroyed, by use or otherwise, he will replace the same with other like material, equally good, to be held and owned in lieu and in place of that which is thus replaced, and the best (which is to be as good as that now in said hotel, including carpets, billiard cloths and balls, linens, beds and bedding, and all other furniture) of the furniture therein at the expiration of said term shall be for all purposes considered and stand in place of and be owned the same to the extent of equal amounts, as the similar material now therein.

And it is further agreed that said Chapin shall and will not during said term remove or take out of said hotel any furniture, neither carpets, linens, beds or bedding, or other furniture after the same shall be once therein without the written consent of said Streeter, unless the same shall have become destroyed or worn out.

7 And it is further agreed by and between the parties hereto that the hotel furniture now in that part of the opera-house building used in connection with said hotel shall be considered as part and that much of the hotel furniture aforesaid, and may be by said Chapin, at his cost, kept there or removed to such other rooms, if any, as he shall during said term from time to time use for hotel guests in connection with said hotel, and in all other respects the same shall be governed by the terms of this contract.

And it is further agreed by and between the parties hereto that in consideration of the premises said Chapin shall and will maintain and keep the sidewalk around and in front of said lots in good order and condition aforesaid, and himself pay for the improving of said sidewalk in October, A. D. 1881.

And in consideration of the premises said Streeter hereby covenants and agrees to and with said Chapin that he, said Streeter, and, in case of his death, his heirs, shall and will, by a good and sufficient deed, sell and convey unto said Chapin all his, said Streeter's,

right, title, and interest of, in, and to the property leased and demised as aforesaid, in and on condition that he, said Chapin, shall and does, within twelve months from this time, pay to Streeter the sum of twenty-three thousand dollars ($23,000.00) in cash at the time of electing to purchase the same, and all rent due at the
8 time of making such election, and if such election is made before the first day of January, 1882, the further sum of sixteen hundred sixty-six and two-thirds dollars ($1,666⅔), less so much of the last-mentioned sum, if any, as shall have been, before the making of such election, paid on the rent aforesaid, but said Chapin can make such election only by making the payment of such $23,000.00 in cash to said Streeter and paying such further sum as required as aforesaid.

And in consideration of the premises said Chapin hereby agrees to and with said Streeter that he, said Chapin, shall and will, within three days from this time, pay to him, said Streeter, one-half of the cash price of all the wood, coal, provisions, and stores they now own.

Witness our hands and seals, at Leadville, Colorado, the day and year first above written.

JAMES STREETER. [SEAL.]
HOWARD C. CHAPIN. [SEAL.]

The plaintiff further alleges that said defendant, in and by the aforesaid written instrument, in consideration of the making of the same and of the agreements by said plaintiff made as therein set forth, promised and agreed to and with the plaintiff (among other things) that he, said defendant, would pay to the plaintiff, his executors, administrators, and assigns, as rent for the use of the prop-
9 erty therein described and thereby leased, during the term therein mentioned, the sum of eight hundred thirty three and one-third dollars in advance on the first day of each month during the first year of said term, and the sum of six hundred sixty-six and two-thirds dollars in advance on the first day of each month during the second year of said term; that by virtue of said written instrument, so made as aforesaid, and by virtue of the said promises, agreements, and covenants therein contained and made by the said defendant to and with the plaintiff as aforesaid, for the considerations aforesaid, there became due and owing to the plaintiff from said defendant the sum of six hundred sixty-six and two-thirds dollars on the first day of December, A. D. 1882; the further sum of six hundred sixty-six and two-thirds dollars on the first day of January, A. D. 1883; the further sum of six hundred sixty-six and two-thirds dollars on the first day of February, A. D. 1883; the further sum of six hundred sixty-six and two-thirds dollars on the 1st day of March, 1883; the further sum of six hundred sixty-six and two-thirds dollars on the 1st day of April, 1883; the further sum of six hundred sixty-six and two-thirds dollars on the 1st day of May, 1883; the further sum of six hundred sixty-six and two-thirds dollars on the 1st day of June, 1883, and the further sum of six hundred sixty-six and two-thirds dollars on the 1st day of July, 1883,

which said several sums of money the said defendant, in and
10 by said written instrument, promised and agreed to pay to the plaintiff.

Yet the said defendant, though often requested so to do, hath not paid said eight several sums of money so due and owing, as aforesaid, to the plaintiff, or any part thereof, nor any interest thereon, but, on the contrary, to pay the same the said defendant hath wholly neglected and refused, and still doth refuse, to pay the same or any part thereof.

Wherefore, and by reason of the premises, the plaintiff prays judgment against said defendant for the sum of five thousand three hundred and thirty-three dollars and thirty-three cents, together with interest at the rate of ten per cent. per annum from the 1st day of December, A. D. 1882, on the sum of $666\frac{2}{3}$, and on said sum of $666\frac{2}{3}$ from the 1st day of January, A. D. 1883; on said sum of $666\frac{2}{3}$ from the 1st day of February, A. D. 1883; on the further sum of $666\frac{2}{3}$ from the 1st day of March, A. D. 1883; on the further sum of $666\frac{2}{3}$ from the 1st day of April, A. D. 1883; on the further sum of $666\frac{2}{3}$ from the 1st day of May, A. D. 1883; on the further sum of $666\frac{2}{3}$ from the 1st day of June, 1883, and on the further sum of $666\frac{2}{3}$ from the 1st day of July, A. D. 1883, and also for costs of suit.

(S'g'd) PARSONS & WALLING,
Attorneys for Plaintiff.

11 To the clerk of the circuit court of the United States for the district of Colorado:

Please issue summons upon the foregoing complaint for the defendant, directed to the United States marshal for service, according to law.

(S'g'd) PARSONS & WALLING,
Attorneys for Plaintiff.

Endorsed: U. S. circuit court. James Streeter *vs.* Howard C. Chapin. Complaint. Filed Jul. 24, 1883. (S'g'd) Edward F. Bishop, clerk. Parsons & Walling, plaintiff's attorneys.

And the said summons is in words and figures as follows, to wit:

Summons and Proof of Service.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

JAMES STREETER, Plaintiff, *versus* HOWARD C. CHAPIN, Defendant.

Complaint. Filed in the clerk's office this 24th day of July, A. D. 1883.

12 The President of the United States of America to Howard C. Chapin, Greeting:

You are hereby notified that an action has been brought in said

court by James Streeter, plaintiff, against you, as defendant, to recover the sum of $5,333.33, due from you, the said defendant, to the said plaintiff on a certain agreement or lease dated at Leadville, in the county of Lake and State of Colorado, on the 31st day of October, A. D. 1881, as more fully set forth in the complaint filed herein, and to which reference is here made, together with interest on said sum at the rate of 10% per annum as follows, to wit: On $666⅔ from December 1st, 1882; on $666⅔ from January 1st, 1883; on $666⅔ from February 1st, 1883; on $666⅔ from March 1st, 1883; on $666⅔ from April 1st, 1883; on $666⅔ from May 1st, 1883; on $666⅔ from June 1st, 1883; on $666⅔ from July 1st, 1883, and for the costs of this suit.

You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise, within forty days after the day of service; and if you fail so to do the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, for said sum of $5,333.33, interest as aforesaid, and costs.

13 Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this 24th day of July, A. D. 1883, and of the Independence of the United States the 108th year.

[SEAL.] (S'g'd) EDWARD F. BISHOP, *Clerk.*

Proof of Service

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

LEADVILLE, *July 31st, A. D.* 1883.

I hereby certify that I received the within writ on the 31st day of July, A. D. 1883, and that I have personally served the same upon the said defendant, Howard C. Chapin, by delivering to Howard C. Chapin personally a true copy of the within writ at the day and time as follows: As to Howard C. Chapin, at Leadville, county of Lake, on the 31st day of July, A. D. 1883.

This writ, therefore, returned satisfied as the law directs, this — day of ——, A. D. 188–.

(S'g'd) WALTER A. SMITH, *Marshal,*
By DAVID A. COWELL,
Deputy Marshal.

14 Endorsed: Gen. No. 1278. Circuit court of the United States for the district of Colorado. James Streeter, plaintiff, *versus* Howard C. Chapin, defendant. Summons. Filed this 2d day of Aug't, A. D. 1883. (S'g'd) Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Parsons & Walling, of Leadville, attorneys for plaintiff.

And afterwards and on, to wit, the 10th day of September, A. D. 1883, came Howard C. Chapin, by Messrs. Belford, Reed & Rockwell, his attorneys, and filed in said court and in said cause his answer to the complaint heretofore filed herein, and said answer is in words and figures as follows, to wit:

Answer.

UNITED STATES OF AMERICA, } ss.
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado, Northern Division.

JAMES STREETER, Plaintiff,
vs.
HOWARD C. CHAPIN, Defendant.

15 The defendant answers the complaint of the plaintiff, and for answer thereto alleges—

First. That as to whether said James Streeter is a citizen of the State of Texas, as alleged, or otherwise, this defendant has not and cannot obtain sufficient information upon which to base a belief.

Second. Defendant admits that he entered into the contract with the plaintiff substantially as alleged in said complaint; but the defendant denies that at the time of the commencement of this suit there was due from the defendant to the plaintiff the sum of five thousand three hundred and thirty-three dollars and thirty-three cents or any other sum of money whatsoever, and interest thereon from the respective times and on the respective sums as alleged in said complaint.

And for a second and further defense defendant alleges and charges the fact to be that the agreement and lease mentioned in the complaint was an agreement of lease of an undivided one-half of the Clarendon hotel, and also for the undivided one-half part of the furniture and fixtures of the said Clarendon hotel, and also the undivided one-half part of all the furniture and fixtures in the rooms in the Tabor Opera House, used and occupied in connection
16 and as part of the said Clarendon hotel, all of said property being situated in the city of Leadville, county of Lake, State of Colorado.

And the defendant further alleges that upon the execution of said agreement of lease defendant took possession of said property known as the Clarendon hotel and the furniture hereinbefore mentioned, and held the quiet, peaceable and exclusive possession thereof until the 10th day of May, A. D. 1882, enjoying the use thereof as was contemplated in and by the said agreement of lease.

And defendant further alleges that on, to wit, the 10th day of May, 1882, one John Hays, who was at that time the duly qualified and acting treasurer of the county of Lake and State of Colorado, owing to the failure of said Streeter to pay the taxes for the years 1880 & 1881 on the property so leased to said Chapin, he, the said treasurer as aforesaid, restrained and levied upon all of the undi-

vided one-half of the furniture and fixtures of the said Clarendon hotel and of the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with the said Clarendon hotel, as hereinbefore described, for the purpose of collecting the delinquent taxes due from the plaintiff for the years 1880 and 1881 and interest thereon and the necessary costs of sale; and
17 the said John Hays, as treasurer as aforesaid, did then and there distrain, levy upon, and seize the undivided one-half part of the said property, to wit, the undivided one-half part of all the property mentioned and described in the said lease, so owned by said Streeter & by him leased to said Chapin as aforesaid, except the real estate mentioned in said lease, to wit, lots numbered ten, eleven, and twelve, in block numbered one, in the Leadville Improvement Company's addition to the town, now city, of Leadville, and the improvements thereon; and that said John Hays, treasurer of Lake county as aforesaid, did then and there advertise, in the same manner as constables are required to advertise by law the sales of personal property under execution from justices' courts in the State of Colorado, that he would sell the said property so seized as aforesaid, or so much thereof as would be necesssary to satisfy the sum of three hundred and fifteen dollars and ninety cents, delinquent taxes due from the plaintiff for the years 1880 and 1881, and interest thereon, to wit, sixty-six dollars and twenty-four cents, and also the necessary costs of sale upon the, to wit, 17th day of May, A. D. 1882, at the hour of 10 o'clock a. m. of said day, at the Clarendon hotel, upon Harrison avenue, in the city of Leadville, in Lake county, State of Colorado, to the highest and best bidder, for cash.

And defendant further alleges that the undivided one-half of said property so owned by the said Streeter, embraced in the said
18 lease, was assessed by the assessor of said county in the separate name of the said Streeter for the taxes due to the said county for the year 1880, and that the undivided one-half of the said property so owned by the said Streeter, embraced in the said lease, was assessed by the assessor of said county in the separate name of the said Streeter for the taxes due to the said county for the year 1881.

And defendant further alleges and charges the fact to be that afterwards and on the said 17th day of May, 1882, at the hour of ten o'clock a. m. of that day, the said John Hays, treasurer as aforesaid, did then and there, in the presence of the said property, proceed to sell the same to the highest and best bidder, for cash, and then and there sold the same to John W. Jacque for the sum of one hundred and six dollars, the said John W. Jacque being the highest and best bidder for the same, and the possession of the undivided one-half of said property was then delivered by the said John Hays, treasurer as aforesaid, to the said John W. Jacque. By reason whereof the said defendant was deprived of the use and enjoyment of the said undivided one-half of said property, said furniture, and fixtures, to which he was entitled under and by virtue of said lease.

And that afterwards, and on the day and year last aforesaid, the

defendant, to prevent the said John W. Jacque from interfering with the said undivided one-half of the property described as
19 aforesaid, did then and there enter into an agreement with the said John W. Jacque that in consideration of the payment to the said John W. Jacque of the sum of two hundred and seventy-five dollars per month, it was agreed that the defendant should have the use of the said undivided one-half part of the said furniture and fixtures and personal property so purchased as aforesaid.

And the defendant further alleges that from that time up to the first day of November, 1882, on the first day of each succeeding month, he paid to the said John W. Jacque the sum of two hundred and seventy-five dollars, amounting in all to the sum of thirteen hundred and seventy-five dollars by him paid as aforesaid; that during that time the defendant was in the possession of the undivided one-half part of said furniture and fixtures as aforesaid, as the tenant of the said John W. Jacque.

Defendant further alleges that he afterwards, and on the first day of November, 1882, purchased the said undivided one-half part of said furniture and fixtures from the said John W. Jacque for a valuable consideration, and from thence hitherto he has been in the possession of the said furniture and fixtures and personal property as the owner thereof by virtue of the said purchase.

And defendant further alleges that by reason of the said restraint, levy, and sale by said treasurer as aforesaid to the said John
20 W. Jacque, the purchaser as aforesaid, defendant was deprived of the use of the undivided one-half part of said hotel, furniture, and fixtures as he was entitled in and by the terms of said lease; that the amount paid to the said John W. Jacque as rent for the same is and was a fair and reasonable amount, and is and was as low as the same could be obtained.

And the defendant alleges and charges the fact to be that the amount claimed to be due for taxes from the plaintiff for the years 1880, and 1881, and the interest thereon was due from the plaintiff for taxes theretofore levied against him in said county of Lake, State of Colorado.

And for a third and further defense this defendant alleges and charges the fact to be that the agreement of lease mentioned in the complaint was an agreement of lease of an undivided one-half of the Clarendon hotel, and also for the undivided one-half part of the furniture and fixtures of the said Clarendon hotel, and also for the undivided one-half part of all the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection and as part of the said Clarendon hotel, all of said property being situated in the city of Leadville, county Lake, State of Colorado.

And the defendant further alleges that upon the execution of said agreement of lease defendant took possession of said property known as the Clarendon hotel, and of the furniture hereinbefore
21 mentioned, and kept and held the quiet, peaceable, and exclusive possession thereof until the 10th day of May, 1882,

enjoying the use thereof as was contemplated in and by the said agreement of lease.

And defendant further alleges that on, to wit, the 10th day of May, 1882, one John Hays, who was at that time the duly qualified and acting treasurer of the county of Lake, in the State of Colorado, re-str[illegible]ed and levied upon all of the undivided one-half part of the furniture and fixtures of the said Clarendon hotel and of the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with the said Clarendon hotel, as hereinbefore described, for the purpose of collecting the delinquent taxes due from the plaintiff for the years 1880 and 1881, and interest thereon, and the necessary costs of sale; and the said John Hays, as treasurer as aforesaid, did then and there distrain, levy upon, and seize the undivided one-half part of the said property, to wit, the undivided one-half part of all the property mentioned and described in the said lease, except the real estate mentioned in the said lease, to wit, lots numbered ten, eleven, and twelve, in block numbered one, in the Leadville Improvement Company's addition to the town, now city, of Leadville, and the improvements thereon; and that said John Hays, treasurer of Lake county as aforesaid, did then and there advertise in the same manner as constables are required
22 to advertise by law the sale of personal property under execution from justices' courts in the State of Colorado, that he would sell the said property or so much thereof as would be necessary to satisfy the sum due of three hundred and fifteen dollars and ninety cents, delinquent taxes due from the plaintiff for the years 1880 and 1881, and interest thereon, to wit, sixty-six dollars and twenty-four cents, and also the necessary costs of sale, upon, to wit, the 17th day of May, 1882, at the hour of 10 o'clock a. m. of said day, at the Clarendon hotel, upon Harrison avenue, in the city of Leadville, in Lake county, State of Colorado, to the highest and best bidder, for cash.

And defendant further alleges that the personal property hereinbefore described was assessed by the assessor of said Lake county jointly in the names of said James Streeter and Howard C. Chapin for the taxes of the year 1880, and that said defendant paid to said John Hays, treasurer as aforesaid, the one-half of the taxes so due for the year 1880 from the said defendant, and the said treasurer of said county received the same from the said defendant, and fully discharged him from any further liability to the said county for the taxes for the year 1880.

And defendant further alleges that the said personal property hereinbefore described was assessed by the assessor of said
23 Lake county jointly in the names of the said James Streeter and Howard C. Chapin for the taxes of the year, 1881, and that the defendant paid to the said John Hays, treasurer as aforesaid, the one-half of the taxes so due for the year 1881 from the said defendant, and the said treasurer of said county received the same from the said defendant, and fully discharged him from any further liability to the said county for the taxes for the year 1881.

And defendant further alleges and charges the fact to be that

afterwards, and on the said 17th day of May, 1882, at the hour of ten o'clock a. m., of that day, the said John Hays, treasurer as aforesaid, did then and there, in the presence of the said property, proceed to sell the same to the highest and best bidder for cash, and then and there sold the same to John W. Jacque, for the sum of one hundred and six dollars, the said John W. Jacque being the highest and best bidder for the same, and the possession of the said undivided one-half of said property was then delivered by the said John Hays, treasurer as aforesaid, to the said John W. Jacque. By reason whereof the said defendant was deprived of the use and enjoyment of the said undivided one-half of said property, said furniture, and fixtures, to which he was entitled under and by virtue of said lease.

And that afterwards, and on the day and year last aforesaid,
24 the defendant, to prevent the said John W. Jacque from interfering with the said undivided one-half of the property described as aforesaid, did then and there enter into an agreement with the said John W. Jacque that in consideration of the payment to the said John W. Jacque of the sum of two hundred and seventy-five dollars per month it was agreed that the defendant should have the use of the said undivided one-half part of the said furniture and fixtures and personal property so purchased as aforesaid.

And the defendant further alleges that from that time up to the first day of November, 1882, on the first day of each succeeding month, he paid to the said John W. Jacque the sum of two hundred and seventy-five dollars, amounting in all to the sum of thirteen hundred and seventy-five dollars by him paid as aforesaid; that during that time the defendant was in the possession of the said undivided one-half part of said furniture and fixtures aforesaid as the tenant of the said John W. Jacque.

And defendant further alleges that he afterwards, and on the first day of November, 1882, purchased the said undivided one-half part of said furniture and fixtures from the said John W. Jacques, for a valuable consideration, and from thence hitherto he has been in the possession of the said furniture and fixtures and personal property as the owner thereof by virtue of the said purchase.

25 And defendant further alleges that by reason of the said restraint, levy, and sale by the said treasurer as aforesaid to the said John W. Jacque, the purchaser as aforesaid, defendant was deprived of the use of the said undivided one-half part of the said hotel, furniture, and fixtures as he was entitled in and by the terms of said lease; that the amount paid to the said John W. Jacque as rent for the same is and was a fair and reasonable amount, and is and was as low as the same could be obtained.

And the defendant alleges and charges the fact to be that the amount claimed to be due for taxes from the plaintiff for the years 1880 and 1881, and the interest thereon, was due from the plaintiff for taxes theretofore levied against him in the said county of Lake, State of Colorado.

(S'g'd) BELFORD, REED & ROCKWELL,
Att'ys for Def'ts.

Endorsed: No. 1278. Circuit court U. S. James Streeter, pl'ff, *vs.* Howard C. Chapin, def't. Answer. Filed Sep. 10, 1883. (S'g'd) Edward F. Bishop, clerk. Belford, Reed & Rockwell, att'ys for def't.

And afterwards and on, to wit, the 3d day of October, A.
26 D. 1883, the same being one of the regular juridical days of the October term, A. D. 1833, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Motion to Strike out Answer Granted. Leave to Answer Again.

JAMES STREETER
vs.
HOWARD C. CHAPIN. } 1278.

Money demand on a lease.

At this day comes the said plaintiff, by C. C. Parsons, Esq., his attorney, and the said defendant, by Clinton Reed, Esq., his attorney, also comes; and the motion of the said plaintiff to strike from the files herein the answer and for judgment coming on now to be heard is argued by counsel, and the court, being now sufficiently advised in the premises, it is ordered that the said answer be stricken from the files herein.

Nevertheless, on motion of the said defendant, it is ordered that he have leave to answer again herein within 10 days from this day, as he shall be advised.

And afterwards and on, to wit, the 19th day of October,
27 A. D. 1883, came again the said defendant, by Messrs. Belford, Reed & Rockwell, his attorneys, and filed in said court and in said cause his second answer to the complaint heretofore filed herein, and the said second answer is in words and figures as follows, to wit:

Second Answer.

UNITED STATES OF AMERICA, } *ss:*
District of Colorado, }

In the Circuit Court of the United States, 8th Circuit, District of Colorado.

JAMES STREETER, Plaintiff,
vs.
HOWARD C. CHAPIN, Dfendant.

Now comes the said defendant, and for answer to the complaint of the plaintiff filed herein alleges—

1st. That as to whether the said plaintiff is a citizen of the State of Kansas as alleged, or otherwise, this defendant has not and cannot obtain sufficient information upon which to base a belief.

2nd. Defendant admits that he entered into the contract with the plaintiff substantially as alleged in said complaint, but denies that at the time of the commencement of this suit there was
28 due from the defendant to plaintiff the sum of five thousand three hundred and thirty-three dollars and thirty-three cents, or any sum of money whatever, or any interest thereon, as alleged in said complaint, or at all.

3rd. For a second and further defense the defendant alleges and charges the fact to be that the agreement and lease mentioned in said complaint was an agreement of lease of an undivided one-half of the Clarenden hotel, and also for the undivided one-half of the furniture and fixtures of the said Clarendon hotel, and the undivided one-half of all the furniture and fixtures in the rooms in the Tabor Opera House, used and occupied in connection with and as part of the said Clarendon hotel, all of said property being situate in the city of Leadville, Lake county, Colorado.

That upon the execution of the said agreement of lease defendant took possession of said undivided one-half of the property known as the Clarendon hotel, and of the furniture hereinbefore mentioned, and held the quiet, peaceable, and exclusive possession thereof until the 10th day of May, 1882, enjoying the use thereof as was contemplated in and by said agreement of lease.

Defendant further alleges that on the 1st day of January,
29 1882, the said plaintiff, James Streeter, was indebted to the county of Lake, in the State of Colorado, in a large sum of money, to wit, in the sum of $4,002.50 for taxes assessed upon property owned by said plaintiff for the years 1880, and 1881, and which said taxes on the 10th day of May, 1882, were due and unpaid; that on the said 10th day of May, 1882, one John Hays, who was at that time the duly qualified and acting treasurer of the county of Lake and State of Colorado, distrained and levied upon all of the said undivided one-half of the furniture and fixtures of the said Clarendon hotel, and of the fixtures and furniture in the rooms in the Tabor Opera House used and occupied in connection with said Clarendon hotel, as hereinbefore described, for the purpose of collecting the delinquent taxes due from the plaintiff for the years 1880 and 1881, as aforesaid, and interest thereon, and the necessary costs of sale. And the said John Hays, as treasurer aforesaid, did then there distrain, levy upon, and seize the said undivided one-half part of the said property mentioned and described in the said lease so owned by said plaintiff and leased to this defendant as aforesaid, except the real estate therein mentioned, to wit, lots numbered 10, 11, and 12, in block numbered 1, in the Leadville Improvement Company's addition to the town, now city, of Leadville, and the improvements thereon, and did then and there, as treasurer of said Lake county, advertise by posting notices for 5 days in 3 public places prior to the
30 day of sale, in the same manner as constables are required to advertise by law the sales of personal property under executions from justices' courts in the State of Colorado, that he would sell the said property so seized as aforesaid, or so much thereof as would be necessary to satisfy the sum of three hundred and fifteen

dollars and ninety cents, delinquent taxes due from the plaintiff for the years 1880 and 1881, and interest thereon, to wit, sixty-six dollars and twenty-four cents, and also the necessary costs of sale, upon the, to wit, *the* 17th day of May, A. D. 1882, at the hour of 10 o'clock a. m. of said day, at the Clarendon hotel, upon Harrison avenue, in the city of Leadville, in Lake county, State of Colorado, to the highest and best bidder, for cash.

Defendant further alleges that afterwards and on the said 16th day of May, 1882, at the hour of 10 o'clock a. m. of that day, the said John Hays, treasurer as aforesaid, did then and there, in the presence of the said property, proceed to sell the same to the highest and best bidder, for cash, and then and there sold the same to one John W. Jacque, for the sum of one hundred and six dollars, the said John W. Jacque being the highest and best bidder for the same, and the possession of the said one undivided half of said property was then delivered by said John Hays, treasurer as aforesaid, to the said John W. Jacque, by reason whereof this defendant
31 was deprived of the use and enjoyment of the said undivided one-half of the said property, furniture, and fixtures, to which he was entitled under and by virtue of said lease.

And this defendant alleges that he has been damaged by the sale of the said undivided one-half of said furniture and chattels so leased to him as aforesaid in a large sum of money, to wit, in the sum of five thousand dollars, five hundred money by him laid out and expended for the purpose of retaining and using said furniture during the term for which the same was leased.

4th. And, for a third and further defense, this defendant alleges and charges the fact to be that the agreement of lease mentioned in the complaint was an agreement of lease of an undivided one-half of the Clarendon hotel, and also for the undivided one-half part of the furniture and fixtures in the rooms in the Taber Opera House used and occupied in connection with and as part of the said Clarendon hotel, all of said property being situate in the city of Leadville, Lake county, Colorado.

And defendant alleges that upon the execution of said agreement of lease he took possession of said property known as the Clarendon hotel, and of the furniture hereinbefore mentioned, and kept and held the same, and the quiet, peaceable, and exclusive posses-
32 sion of the same, until the 10th day of May, 1882, enjoying the use thereof, as was contemplated in and by the said agreement of lease.

And defendant alleges that there was assessed and levied upon the whole of said furniture and property mentioned in said lease, as taxes for the years of 1880 and 1881, the sum of six hundred and thirty-one dollars and eighty cents; that said property, at the time said assessment and levy was made, was owned by this defendant and said plaintiff jointly, each owning the undivided one-half of, in, and to the same; that the same was assessed to Streeter and Chapin in the name of Streeter and Chapin, and said Chapin, defendant herein, paid to the treasurer of said Lake county, Colorado, one-half of the said taxes so assessed against said property, and was

by the said treasurer fully discharged from all claims for taxes on said property for said years of 1880 and 1881.

Defendant further alleges that he requested the said plaintiff to pay his half of the taxes so assessed, but that the said Streeter refused so to do, and repeatedly declared that he never would, in any manner, pay half of said taxes, and notified said defendant that he would never allow or repay him any part of said taxes if said defendant paid them; that the said plaintiff made the said declaration to this defendant prior to the execution of said lease and while they were in partnership of keeping said hotel, and also after
33 the dissolution of said partnership and the executing of said lease by said plaintiff.

And defendant alleges that on, to wit, the 10th day of May, 1882, one John Hays, who was at that time the duly qualified and acting treasurer of the county of Lake, in the State of Colorado, distrained and levied upon said Streeter's undivided one-half part of the furniture and fixtures of the said Clarendon hotel, and of the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with the said Clarendon hotel, as hereinbefore described, for the purpose of collecting the delinquent taxes due from the plaintiff, as aforesaid, upon said property for the years of 1880 and 1881, and interest thereon, and the necessary costs of sale; and the said John Hays, treasurer as aforesaid, did then and there distrain, levy upon, and seize the undivided one-half part of the said property, to wit, the undivided one-half part of all the property mentioned and described in the said lease, except the real estate therein mentioned, to wit, lots numbered 10, 11, and 12, in block numbered 1, in the Leadville Improvement Company's addition to the town (now city) of Leadville, and the improvements thereon, and did then and there, as treasurer of said Lake county, advertise, by posting notices for 5 days in three public places prior to the day of sale (in the same manner as constables are required to advertise by law the sale of personal
34 property under execution from justices' courts in the State of Colorado), that he would sell the said property or so much thereof as would be necessary to satisfy the sum of three hundred and fifteen dollars and ninety cents, delinquent taxes due from the plaintiff for the years 1880 and 1881, and interest thereon, to wit, sixty-six dollars and twenty-four cents, and also the necessary costs of sale upon, to wit, the 16th day of May, 1882, at the hour of ten o'clock a. m. of said day, at the Clarendon hotel, upon Harrison avenue, in the city of Leadville, in Lake county, State of Colorado, to the highest and best bidder, for cash.

Defendant further alleges that afterwards, and on the 16th day of May, 1882, at the hour of ten o'clock a. m. of that day, the said John Hays, treasurer as aforesaid, did then and there in the presence of said property, proceed to sell the same to the highest and best bidder, for cash, and then and there sold the same to one John W. Jacque for the sum of one hundred and six dollars, the said John W. Jacque being the highest and best bidder for the same, and the possession of the said undivided one-half of said property was then

delivered by the said treasurer, John Hays, to the said John W. Jacque, by reason whereof the said defendant was deprived of the use and enjoyment of the said undivided one-half of said property, fixtures, and furniture to which he was entitled under and by virtue of said lease.

35 And the defendant alleges that he has been damaged by the said sale of said undivided one-half of said furniture and chattels so leased to him as aforesaid in a large sum of money, to wit, in the sum of five thousand five hundred dollars, money by him paid out and expended for the purpose of retaining and using said furniture during the term for which the same was leased.

Wherefore the defendant prays judgment for his costs.

(S'g'd) BELFORD & REED & ROCKWELL,
Att'ys for Def'ts.

Endorsed: 1278. U. S. circuit court, dist. of Colorado. James Streeter *vs.* Howard C. Chapin. Answer No. 2. Filed Oct. 19, 1883. (S'g'd) Edward F. Bishop, clerk.

36 And afterwards and on, to wit, the 3rd day of December, A. D. 1883, came again the said plaintiff, by Messrs. Parsons & Walling, his attorneys, and filed in said court and in said cause his replication to the answer heretofore filed herein; and the said replication is in words and figures as follows, to wit:

Replication.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado, Northern Division.

JAMES STREETER, Plaintiff,

vs.

HOWARD C. CHAPIN, Defendant.

Now comes James Streeter, the plaintiff above named, and for his replication to the answer of the said Howard C. Chapin, defendant herein, denies—

That on the first day of January, A. D. 1882, the said plaintiff was indebted to the county of Lake, in the State of Colorado, in a large sum of money, to wit, the sum of four thousand and two dollars and fifty cents ($4,002.50), or in any other sum, for taxes as-

37 sessed upon property owned by the plaintiff for the years A. D. 1880 and 1881, and denies the said taxes, or any taxes, due from this plaintiff, or assessed against the property of this plaintiff, were, on the tenth day of May, A. D. 1882, or at any other time, due and unpaid.

Plaintiff denies that on said tenth day of May, A. D. 1882, or at any other time, the said John Hayes, treasurer of Lake county, Colorado, distrained and levied upon all or any of the undivided one-half of the furniture and fixtures of the said Clarendon hotel and of

the fixtures and furniture in the rooms in the Tabor Opera House used and occupied in connection with said Clarendon hotel, for the purpose of collecting the delinquent taxes due from the plaintiff for the years A. D. 1880 and 1881 and interest thereon and the necessary costs of sale, as alleged in said answer.

Plaintiff denies that the said John Hayes, as treasurer as aforesaid, did then and there, or at any time, distrain, levy upon, and seize the undivided one-half part of the said property mentioned and described in the said lease so owned by the plaintiff and leased to the defendant as aforesaid, except the real estate therein mentioned, as averred in said answer.

Plaintiff denies that said Hayes, as treasurer aforesaid, did then and there, or at any time, advertise by posting notices for five days in three public places, prior to the day of sale, in the same
38 manner as constables are required to advertise by law the sales of personal property under executions from justices' courts in the State of Colorado, or in any other manner, that he would sell the said property, so alleged to have been seized as aforesaid, or so much thereof as would be necessary to satisfy the sum of three hundred and fifteen dollars and ninety cents ($315.90), delinquent taxes due from the plaintiff for the years A. D. 1880 and 1881, and interest thereon, to wit, sixty-six dollars and twenty-four cents ($66.24), and also the necessary costs of sale, or any sum whatever, upon the, to wit, *the* sixteenth (16th) day of May, A. D. 1882, the hour of ten o'clock a. m. (10) of said day, or at any other day or hour, at the Clarendon hotel, upon Harrison avenue, in the city of Leadville, in Lake county, State of Colorado, or at any other place, to the highest and best bidder, or to any bidder, for cash or otherwise.

Plaintiff further denies that on the sixteenth (16th) day of May, A. D. 1882, at the hour of ten o'clock a. m. of said day, or at any other time, the said John Hayes, treasurer as aforesaid, did then and there, in the presence of said property or otherwise, proceed to sell the same to the highest and best bidder, for cash, or to any bidder for anything; and denies that the said Hayes then and there sold the same to one John W. Jacque, or to any other person, for the sum of one hundred and six ($106) dollars or for any other sum.
39 Plaintiff denies that the said John W. Jacque was the highest and best bidder for the same, or that he was a bidder at all.

Plaintiff denies that the possession of the said one undivided half of said property was then or at any time delivered by said John Hayes, treasurer as aforesaid, to the said John W. Jacque or any other person; and denies that the said defendant was in any manner or by reason of any of the facts alleged in said answer deprived of the use and enjoyment of the said undivided one-half of the said property, furniture, and fixtures to which he was entitled under and by virtue of said lease.

Plaintiff further denies that the said defendant has been damaged by the sale of the said undivided one-half of said furniture and chattels so leased to him as aforesaid in a large sum of money, to

wit, in the sum of five thousand and five hundred ($5,500.00) dollars or in any sum whatever, money by him laid out and expended for the purpose of retaining and using said furniture during the term for which the same was leased, as alleged in said answer.

The plaintiff further, and by way of reply to the third defense contained in the answer of the said defendant, denies that the said defendant Chapin paid to the treasurer of said Lake county, Colorado, one-half of the said taxes assessed against said property mentioned in said third defense; and denies that said defendant was by
40 the said treasurer fully discharged or in any manner discharged from all or any claims for taxes on said property for said years of 1880 and 1881, as set forth in said third defense.

Plaintiff further denies that the said defendant requested this plaintiff to pay his, said plaintiff's, half of the taxes so assessed, and denies that he, said plaintiff, refused so to do. Plaintiff denies that he repeatedly declared or ever declared to defendant that he never would in any manner pay half of said taxes, and denies that he notified said defendant that he would never allow or repay to him, said defendant, any part of said taxes if he, said defendant, paid them, and denies that he, said plaintiff, made the said declaration to the defendant herein prior to the execution of said lease and while they were in partnership keeping said hotel, and also after the dissolution of said partnership and the execution of said lease by this plaintiff, or at any time whatever.

Plaintiff further denies that on the tenth (10) day of May, A. D. 1882, or at any other time, the said Hayes, treasurer as aforesaid, distrained and levied upon said Streeter's undivided one-half part of the furniture and fixtures of said Clarendon hotel, and of the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with the Clarendon hotel, for the purpose of collecting the delinquent taxes due from the plaintiff
41 as aforesaid upon said property for the years A. D. 1880 and 1881, and interest thereon and the necessary costs of sale, or for any other purpose, and denies that the said John Hayes, treasurer as aforesaid, did then and there distrain, levy upon, and seize the undivided one-half part of the said property, to wit, the undivided half part of all the property mentioned and described in the said lease, except the real estate therein mentioned, and denies the said Hayes, as treasurer as aforesaid, did then and there, or at any time or place, advertise by posting notices for five days in three public places prior to the day of sale, in the same manner as constables are required to advertise by law the sale of personal property under execution from justices' courts in the State of Colorado, or by any other means or in any manner whatever, or at any time, that he would sell the said property, or so much thereof as would be necessary, or any property whatever, to satisfy the sum of three hundred and fifteen dollars and ninety cents ($315.90), or any other sum, delinquent taxes due from the plaintiff for the years A. D. 1880 and 1881, and interest thereon, to wit, ($66.24), and also the necessary costs of sale, upon the sixteenth (16th) day of May, A. D. 1882, at the hour of ten (10) o'clock a. m. of said day, at the Claren-

don hotel, on Harrison avenue, in the city of Leadville, county of Lake and State of Colorado, or at any other time or place, to the highest and best bidder, for cash or otherwise. Plaintiff denies that on the sixteenth (16) day of May, A. D. 1882, at the hour of
42 ten o'clock a. m. of that day, or at any other day or hour, the said John Hayes, treasurer as aforesaid, did then and there, in presence of said property or otherwise, proceed to sell the same to the highest and best bidder, for cash or otherwise, and did then and there sell the same, or any part thereof, to one John W. Jacque for the sum of one hundred and six dollars ($106.00), or for any sum whatever. Plaintiff denies the said John W. Jacque was the highest and best bidder for the same, or that he bid for said property at all.

Plaintiff denies that the possession of the undivided one-half of said property was then or at any time delivered by the said treasurer, John Hayes, to the said John W. Jacque, as alleged in said answer, and denies that by reason of any of the facts alleged the said defendant was deprived of the use and enjoyment of the said undivided one-half of said property, fixtures, and furniture, to which he was entitled under and by virtue of said lease, as charged in said answer.

Plaintiff further denies that the defendant has been damaged by the said pretended sale of said undivided one-half of said furniture and chattels, so leased to him as aforesaid, in the sum of five thousand five hundred ($5,500) dollars, or in any sum whatever, moneys by him, the said defendant, paid out and expended for the purpose of retaining and using said furniture during the term for which the same was leased, and denies that the defendant paid
43 out and expended the said sum or any other sum for said purpose, as alleged in said answer.

Plaintiff further denies that the said Hayes as aforesaid in any manner or ever at all advertised that he would sell the property aforesaid, or any thereof, either as alleged in said answer or otherwise or at all, and said plaintiff denies that there are or ever were, as in said answer alleged, any delinquent taxes, or any taxes, either of the sum of $315.90 *dollars* taxes, or any part thereof, or $66.24 interest thereon or any part thereof, and denies that there ever were or are any taxes due from the said plaintiff for the years A. D. 1880 and 1881, or for either of those years, or any interest, and denies that the sum of $315.90 *dollars* and interest thereon to the amount of $66.24 *dollars* or any part of such sums or any costs are or ever were due from said plaintiff.

And said plaintiff further denies all, each, and every allegation in said answer made or contained, except —; and said plaintiff avers that said defendant, on the 31st day of October, A. D. 1881, took and has ever since kept, had, and held the quiet, peaceable, and exclusive possession of all and singular the hotel and furniture and fixtures and rooms in said answer mentioned, and of the undivided one-half of said hotel and furniture and fixtures and property leased by said plaintiff to said defendant, as shown in and by said complaint, and still holds such possession thereof, using and en-
44 joying the same as such lessee of said plaintiff.

And for a second and further cause of replication in this behalf said plaintiff refers to the above and foregoing part of this replication as part hereof.

And said plaintiff further alleges that before and at the time of the making of the written instrument, of which a copy is set forth in the complaint in this action, said plaintiff and defendant were partners, and as such then and before then owned and were possessed of the Clarendon hotel, and furniture and fixtures and other articles of personal property in said answer and complaint mentioned, the same being the property of which an undivided one-half was leased, as shown in and by said complaint, and said plaintiff and said defendant so owned and possessed said property from said time in the first part of A. D. 1880 until the making of said written instrument, and then, to wit, on the 31st day of October, A. D. 1881, that partnership, the firm so composed of said plaintiff and defendant, was dissolved, and from thence hitherto and at the several times in said answer mentioned said plaintiff and defendant have in the manner thus shown continued to own said hotel and the furniture and fixtures and property aforesaid, and by said defendant in his own behalf and as lessee of said plaintiff, as thus shown, to possess said property—that is, the hotel and furniture, fixtures and property aforesaid.

45 And said plaintiff alleges that all or any taxes or pretended taxes ever levied or assessed to, on, or against, or due from said plaintiff, either alone or with any other person or persons, in said county of Lake, or on or against any property, rights, or credits, or undivided part of or interest in any property, rights, or credits, as property, rights, or credits of said plaintiff, either in whole or in part, or with any person or persons, were and was levied and assessed to, on, and against, and due from said plaintiff and defendant as partners as aforesaid, and against, on, and because of property owned by said plaintiff and defendant as such partners, and said defendant did not, nor did any person or persons for him, pay any part of any such taxes before the 18th day of May, A. D. 1882, and said plaintiff has paid to the county treasurer of said county one-half of all such taxes, otherwise than by any pretended sale of any property or of an undivided one-half part of or interest in any property; and said plaintiff has otherwise than by any sale or pretended sale paid, discharged, and satisfied all taxes ever due from him, said plaintiff, either in said county or State or at all.

And said plaintiff further alleges that said defendant fraudulently, for the purpose and with intent to injure, cheat, and defraud said plaintiff of and out of the undivided one-half of the personal property in said answer mentioned, did promise and induce the

46 above-mentioned John Hayes to pretend, without notice or advertisement thereof, and without having distrained, levied on, or seized the same or any — thereof, to sell such undivided one-half of said personal property in May, A. D. 1881, and colluded with said Hayes and said Jacque to prevent, and by such collusion did prevent, other persons from bidding for any of said property at any sale thereof ever either made or pretended to be made.

And that said Jacque did not give or pay anything for any of said property, or for any undivided one-half part thereof or interest therein, but, on the contrary, bid therefor, and pretended to purchase the same really only as agent and trustee of and for said defendant.

And said plaintiff denies that there was, on or before the 17th day of May, A. D. 1882, any taxes or tax, or interest thereon, or costs due from said plaintiff, or from said plaintiff and said defendant, or from said plaintiff and any other person or persons, other than taxes pretended to be assessed and levied against said plaintiff and said defendant, as partners, and on and against and because of personal property owned and possessed by said plaintiff and defendant as such partners.

And said plaintiff further alleges that said Jacques is and has been county clerk of said county of Lake ever since some time in January, A. D. 1882, and knew and had notice of all and singular the matters and things herein mentioned before he gave or
47 paid anything for any part or portion of any of the property aforesaid.

And, for a third and further cause of replication in this behalf, said plaintiff denies that said John Hayes, as such treasurer or otherwise, ever sold or pretended to sell any other property or an undivided one-half part of any other property, or an undivided one-half interest in any other property in said answer mentioned, or commenced so to do, at any time by him advertised, either as in said answer alleged or otherwise, or at all.

And, for a fourth and further cause of replication in this behalf, said plaintiff denies that any in or by said answer alleged taxes, interest, or costs were ever due from him only.

And, for a fifth and further cause of replication in this behalf, said plaintiff denies that any in or by said answer alleged taxes, interest, or costs were ever due from him only, or from him — any person or persons, either in whole or in part.

And, for a sixth and further cause of replication to the answer of the said defendant, the plaintiff alleges that the agreement of lease set forth in the complaint of the plaintiff herein is the identical agreement sued on in the case of James Streeter against Howard C. Chapin, being cause number 1049 on the docket of this court, and tried and adjudicated at the May term, A. D. 1883, of this court; that the said James Streeter, plaintiff herein, was plaintiff, and the said Howard C. Chapin, — herein, was the defendant in said
48 last-mentioned action; that this action is brought to recover installments of rent which accrued under the provisions of said lease since the commencement of said former action thereon.

Plaintiff further alleges that the undivided one-half interest in the furniture and fixtures of the Clarendon hotel, and in the rooms of the Tabor Opera House used and occupied as part of said Clarendon hotel, described in the answer of the defendant, is the identical undivided half interest in such furniture and fixtures described in the answer of defendant in said cause number 1049 above referred to; that the assessment of taxes on said interest in said furniture

of said Streeter for the years A. D. 1880 and 1881, and the levy and the distraint of said interest in said furniture and fixtures and of the sale of the same by said John Hayes, treasurer of Lake county, Colorado, to said John W. Jacque, for the purpose of satisfying the alleged indebtedness of said Streeter for the taxes of said years A. D. 1880 and 1881, as alleged in said answer of defendant in this action, is the same pretended assessment, levy, distraint, and sale, and the same pretended indebtedness for taxes alleged and attempted to be proved by said defendant as a defense to said plaintiff's former action upon said contract of lease in this court hereinbefore referred to.

49 Wherefore, and by reason of the premises, the plaintiff demands judgment as prayed for in his said complaint.

(S'g'd) PARSONS AND WALLING,
Plaintiff's Attorneys.

Endorsed: No. 1278. U. S. circuit court. James Streeter *v.* Howard Chapin. Replication. Filed Dec. 3, 1883. (S'g'd) Edward F. Bishop, clerk. Parsons and Walling, att'ys for plaintiff.

And afterwards and on, to wit, the 8th day of December, A. D. 1883, the same being one of the regular juridical days of the October term, A. D. 1883, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Trial and Judgment.

JAMES STREETER
vs.
HOWARD C. CHAPIN. } 1278.

Money demand.

At this day comes the said plaintiff, by C. C. Parsons, Esq., his attorney, no one appearing on behalf of the said defendant.

50 And thereupon comes a jury, to wit, 1, William Sawtell; 2, Morris Thomas; 3, E. Rowland; 4, John McKinley; 5, Gregory Board; 6, Matt. Finehart; 7, George W. Harriman; 8, John Shea; 9, John McCarthy; 10, Charles J. Cole; 11, Charles Evans; 12, Thomas Gammon, twelve good and lawful men, and they are duly selected and tried, impanelled, and sworn to well and truly try the issues herein joined, and a true verdict render according to the evidence.

And the said jurors, having heard the evidence produced herein and the instructions of the court, upon their oaths do say they find the issues for the said plaintiff, and assess his damages at five thousand four hundred and forty-eight dollars and eighty-eight cents ($5,448.88).

Therefore, on motion of the same plaintiff, it is ordered by the court that judgment be entered herein upon the verdict of the jury in favor of the said plaintiff and against the said defendant for the

sum of five thousand four hundred and forty-eight dollars and eighty-eight cents ($5,448.88), and the said plaintiff's costs, to be taxed.

And thereupon, and on the same day, to wit, the 8th day of December, A. D. 1883, judgment was duly entered against the said defendant in the judgment-book of said court in pursuance of
51 the statutes and rules of court; and the said judgment is in words and figures as follows, to wit:

Judgment.

JAMES STREETER
vs. } 1278.
HOWARD C. CHAPIN.

Money demand.

On this 8th day of December, A. D. 1883, the same being one of the regular juridical days of the October term, A. D. 1883, of said court, there being present the Honorable Moses Hallett, district judge—

It is considered by the court that the said plaintiff do have and recover of and from the said defendant five thousand four hundred and forty-eight dollars and eighty-eight cents ($5,448.88), his damages, by occasion of the premises in his complaint mentioned, in form aforesaid assessed, and his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

And thereupon, and on the same day, to wit, the 8th day of December, A. D. 1883, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Motion to Vacate Judgment Granted.

52 JAMES STREETER
vs. } 1278.
HOWARD C. CHAPIN.

Money demand.

At this day comes the said plaintiff, by C. C. Parsons, Esq., his attorney, and the said defendant, by Clinton Reed, Esq. his attorney, also comes.

And thereupon the said defendant here, in open court, moves the court to vacate the judgment this day had herein, and the court being now sufficiently advised in the premises—

It is ordered by the court that the said motion be granted.

Wherefore it is ordered by the court that the judgment this day had herein be vacated and for naught held, conditioned nevertheless, that the said defendant pay into court, for the use of the said plaintiff, the costs of the said plaintiff accrued and to be taxed, and that the said defendant recover no costs hereinhereafter to accrue should judgment be awarded unto him.

And thereupon and on the same day, to wit, the 8th day of December, A. D. 1883, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Consolidating with 1328.

JAMES STREETER
vs.
53 HOWARD C. CHAPIN. } 1328.

Money demand.

At this day comes the said plaintiff, by C. C. Parsons, Esq., his attorney, and the said defendant, by Clinton Reed, Esq., his attorney, also comes.

And the motion of the said defendant to consolidate this cause with the cause now in this court pending, between the said parties plaintiff and defendant, and numbered on the docket of said court number 1328, coming on now to be heard, and it now appearing to the court that these said causes are of a like nature and relate to the same question, therefore it is ordered that the said motion be granted and that these said causes be consolidated, to be known and numbered as number 1278.

And be it further remembered that theretofore and on, to wit, the 17th day of September, 1883, came the said plaintiff, James Streeter, by his attorneys aforesaid, and filed in said court and in said cause his complaint and sued out of and under the seal of said court a writ of summons against the said defendant, Howard C. Chapin.

And the said complaint is in words and figures as follows, to wit:

Complaint.

54 UNITED STATES OF AMERICA, } *ss*:
District of Colorado. }

In the Circuit Court of the United States for the District of Colorado.

JAMES STREETER, Plaintiff,
vs.
HOWARD C. CHAPIN, Defendant.

The said James Streeter, who is a citizen of the State of Kansas, and the plaintiff in this action, complains of the said Howard C. Chapin, who is a citizen of the State of Colorado, and the defendant herein, and alleges that on the 31st day of October, A. D. 1881, at the city of Leadville, in the State of Colorado, he, the said plaintiff, and the said defendant made, executed, sealed with their respective seals, and mutually delivered to each other their certain written instrument of that date, now to the court here shown, the same being of the tenor and effect and in the words and figures following, to wit:

"This agreement, made and entered into this 31st day of October, A. D. 1881, by and between James Streeter, party of the first part, and Howard C. Chapin, party of the second part, both of the city of Leadville, Colorado, witnesseth: That the said Streeter, for and in consideration of the rents reserved and the cove-

nants, promises, and agreements hereinafter mentioned,
55 on *the* part — and performed, and of the guaranty contract hereto attached, hath demised, let, and leased, and by these premises doth demise, let, and lease, unto said Chapin, an undivided half of lots Nos. ten (10), eleven (11), and twelve (12) in block number one (1), in the Leadville Improvement Company's addition to the town (now city) of Leadville, in the county of Lake and State of Colorado, and the buildings thereon situate, including the Clarendon hotel, and of all the hotel furniture therein, for the term of two years from and commencing on the first day of November, A. D. 1881:

To have and to hold the same unto the said Chapin from said first day of November, A. D. 1881, for and during said term of two years then next ensuing, said Chapin yielding and paying for the same unto the said Streeter, his executors, administrators, and assigns, and the said Streeter hereby reserves as rent therefor the sum of $18,000, payable in sums, installments, and at times as hereinafter specified.

And said Chapin, in consideration of the making of this agreement by the said Streeter, hereby covenants, promises, and agrees to and with said Streeter, that he, said Chapin, shall and will pay unto him, said Streeter his executors, administrators, and assigns, as rent for the use during said term of the property so leased as aforesaid the sum of eight hundred thirty-three and one-third dollars ($833⅓), in advance, on the first day of each month, during the first year of said term, and the sum of ($666⅔)
56 six hundred and sixty-six and two-thirds dollars, in advance, on the first day of each month during the second year of said term, in sums, installments, and at times as follows, to wit, the sum of eight hundred and thirty-three and one-third dollors ($833⅓) on the first day of November, A. D. 1881, and the same amount—that is, eight hundred thirty three and one-third dollars ($833⅓)—on the first day of each of the following-named months, respectively, namely, on the first day of December, A. D. 1881, the first days of January, February March, April, May, June, July, August, September, and October, A. D. 1882, and the sum of six hundred sixty-six and two-thirds dollars ($666⅔) on the first day of November, A. D. 1882, and the same amount—that is, six hundred sixty-six and two-thirds dollars ($666⅔)—on the first days of each of the following-named months, respectively, namely, on the first day of December, A. D. 1882, the first days of January, February, March, April, May, June, July, August, September, and October, A. D. 1883; and that said Chapin shall and will, on the expiration of said term, yield up and deliver the aforesaid undivided half of the property aforesaid so leased to him as above shown to said Streeter in as good order and condition as the same are now in, loss by fire or unavoidable accident and ordinary wear excepted; and that he, said Chapin, shall and will keep the premises and hotel furniture aforesaid in good repair during said term at his own expense,
56½ and that he will not underlet said premises or furniture or any part thereof, or any part or portion of the same, or as-

sign the lease or any portion thereof without the written consent of said Streeter first had and obtained; and that he will not use or permit said premises or furniture or any thereof to be used for any purpose prohibited by or contrary to the laws of the United States or the State of Colorado.

And it is further hereby agreed by and between the parties hereto that if the rent aforesaid, or any part thereof, or any or either of the above-mentioned sums of money, or any part thereof, shall be or become behind or unpaid or remain overdue on the day of the payment whereon the sum ought to be paid as aforesaid, or if default shall be made in any of the covenants, promises, or agreements herein contained to be kept, done, or performed by said Chapin, then it shall and may be lawful for said Streeter, his heirs, agent, attorney, or assigns, at either his or their election, to end said term, and into the said premises, or any part thereof, either with or without process of law, to re-enter, and said Chapin, and any other person or persons occupying in or upon the same, to expel, remove, and put out, using such force as may be necessary in so doing, and the aforesaid undivided half of said premises, and of the furniture aforesaid, again to repossess and enjoy as in his first and
57 former estate; and if at any time said term shall be ended at such election or otherwise, and at the termination thereof said Chapin does hereby covenant and agree to and with said Streeter to surrender and deliver up the aforesaid undivided half of the premises and furniture aforesaid to said Streeter, his heirs and assigns, immediately upon the termination of said term, and if said Chapin shall remain in possession of the same, or after such default or after the termination of said term, he and all persons claiming under him shall, at the election of said Streeter, his heirs and assigns, be deemed guilty of a forcible detainer of said undivided half of the premises aforesaid, and subject to eviction and removal therefrom and from the possession of the undivided half of the furniture aforesaid, forcibly or otherwise, with or without process of law, at the election of said Streeter, his heirs or assigns; and it is further hereby agreed by and between the parties hereto that said Chapin shall and will, at the expiration of said term, have and replace the furniture aforesaid, including all linens and the beds and bedding, in said hotel in as good condition as the same are now in, and as the same wears or becomes destroyed by use or otherwise he will replace the same with other like material equally good, to be held and owned in lieu and in place of that which is thus replaced, and the best (which is to be as good as that now in said hotel, including carpets, billiard cloths and balls, linens, beds and
58 bedding, and all other furniture) of the furniture therein, at the expiration of said term, shall be for all purposes considered and stand in place of and be owned, the same to the extent of equal amounts as the similar material now therein; and it is further agreed that said Chapin shall and will not during said term remove or take out of said hotel any furniture, neither carpets, linens, beds or bedding, or other furniture, after the same shall be once therein, without the written consent of said Streeter

unless the same shall have become destroyed or worn out. And it is further agreed by and between the parties hereto that the hotel furniture now in that part of the Opera House building used in connection with said hotel shall be considered as part and that much of the hotel furniture aforesaid, and may be by said Chapin at his cost kept thence or removed to such other rooms, if any, as he shall during said term from time to time use for guests in connection with the said hotel, and in all other respects the same shall be governed by the terms of this contract. And it is further agreed by and between the parties hereto that, in consideration of the premises, said Chapin shall and will maintain and keep the sidewalk around and in front of said lots in good order and condition aforesaid and himself pay for the improving of said sidewalk in October, A. D. 1881.

And in consideration of the premises said Streeter hereby covenants and agrees to and with said Chapin that he, said Streeter, and, in case of his death, his heirs, shall and will by a good
59 and sufficient deed sell and convey unto said Chapin all his, the said Streeter's, right, title, and interest of, in, and to the property leased and demised as aforesaid, if and on condition that that he, said Chapin, shall and does within twelve months from this time pay to said Streeter the sum of twenty-three thousand dollars ($23,000.00) in cash at the time of electing to purchase the same, and all rent due at the time of making such election; and if such election is made before the first day of January, 1882, the further sum of sixteen hundred sixty-six and two-thirds dollars ($1,666⅔), less so much of the last-mentioned sum, if any, as shall have been before the making of such election paid on the rent aforesaid, but said Chapin can make such election only by making the payment of such $23,000.00 in cash to said Streeter and paying such further sum as required as aforesaid; and in consideration of the premises said Chapin hereby agrees to and with said Streeter that he, said Chapin, shall and will within three days from this time pay to him, said Streeter, one-half of the cost price of all the wood, coal, provisions, and stores they now own.

Witness our hands and seals, at Leadville, Colorado, the day and year first above written.

JAMES STREETER. [SEAL.]
HOWARD C. CHAPIN. [SEAL.]

60 The said plaintiff further alleges that the said defendant, in and by the aforesaid written instrument, in consideration of the making of the same, and of the agreements by said plaintiff made, as shown therein, thereby covenanted, promised, and agreed to and with said plaintiff, among other things, that he, said defendant, would pay to the plaintiff, his executors, administrators, and assigns, as rent during the term therein mentioned of the property thereby leased, the sum of $833⅓, in advance, on the first day of each month during the first year of said term, and the sum of $666⅔, in advance, on the first day of each month during the second year of said term.

Plaintiff further alleges that the said defendant, by the terms of

said written instrument, promised and agreed to and with the plaintiff to pay to him, said plaintiff, the sum of six hundred sixty-six and two-thirds dollars, as and for the rent aforesaid, on the 1st day of August, A. D. 1883, and the further sum of six hundred sixty-six and two-thirds dollars on the first day of September, A. D. 1883; yet said defendant, though often requested, has not paid to this plaintiff the said sum of money so due and payable on the first day of August, A. D. 1883, nor the said sum due and payable on the first day of September, A. D. 1883, but, on the contrary, to pay the same, or any part thereof, the said defendant has hitherto and still does wholly neglect and refuse.

61 Wherefore the plaintiff prays judgment against said defendant for the sum of one thousand three hundred and thirty-three and one-third dollars so due as aforesaid, together with interest at the rate of ten per cent. per annum on the sum of six hundred sixty-six and two-thirds dollars from the 1st day of August, A. D. 1883, and on the same sum from the 1st day of September, A. D. 1883, and for costs of suit.

(S'g'd) PARSONS & WALLING,
Attorneys for Plaintiff.

STATE OF COLORADO, }
County of Lake, } *ss:*

Charles C. Parsons, being first duly sworn, says that he is one of the attorneys for the plaintiff in the foregoing action: that the said plaintiff is a non-resident of the State of Colorado, and is now absent from the said county of Lake and State aforesaid, and for that reason is unable to verify the foregoing complaint; that affiant is a resident of the said county of Lake. Affiant further says that he has read the foregoing complaint and knows the contents thereof, and that the facts stated and allegations therein contained are true of his own knowledge.

(S'g'd) CHAS. C. PARSONS.

Sworn to by the said Charles C. Parsons before me, and signed by him in my presence, this 15th day of September, A. D. 1883.

62 [SEAL.] (S'g'd) FRANK ESTABROOK,
Notary Public.

Præcipe.

JAMES STREETER, Plaintiff, *vs.* HOWARD C. CHAPIN, Defendant.

To the clerk of the circuit court of the United States for the district of Colorado:

Please issue summons in the above-entitled action for the defendant above named, directed to the United States marshal of said district, for service. Amount claimed, $1,333.33\frac{1}{3}$, together with interest on $666\frac{2}{3}$ from August 1st, 1883, and on said sum of $666\frac{2}{3}$ from September 1st, 1883, and costs.

(S'g'd) PARSONS & WALLING,
Attorneys for Plaintiff.

Endorsed: No. 1328. U. S. circuit court. James Streeter *vs.* Howard C. Chapin. Complaint. Filed Sep. 17, 1883. (S'g'd) Edward F. Bishop, clerk. Parsons & Walling, att'ys for pl'ffs.

And the said summons is in words and figures as follows, to wit:

63 *Summons and Proof of Service.*

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

JAMES STREETER, Plaintiff,
versus
HOWARD C. CHAPIN, Defendant.

Complaint filed in the clerk's office this 17th day of September, A. D. 1883.

The President of the United States of America to Howard C. Chapin, Greeting:

You are hereby notified that an action has been brought in said court by James Streeter, plaintiff, against you, as defendant, to recover the sum of $1,333⅓ due from you, the said defendant, to the said plaintiff upon a certain agreement made and entered into the 31st day of October, A. D. 1881, as more fully set forth and described in the complaint filed herein, and to which reference is here made, together with interest at the rate of 10% per annum on the sum of $666⅔ thereof from the 1st day of August, A. D. 1883, and on the same sum from the 1st day of September, A. D. 1883, and for costs of suit.

64 You are hereby required to appear and demur or answer to the complaint filed in said action in said court within ten days (exclusive of the day of service) after this summons shall be served on you, if such service shall be made within the county of Arapahoe; otherwise within forty days from the day of service; and if you fail so to do the said plaintiff will take judgment against you by default, according to the prayer of the said complaint, for said sum of $133⅓, interest as aforesaid, and costs.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of the said circuit court, at the city of Denver, in said district, this 17th day of September, A. D. 1883, and of the Independence of the United States the 108th year.

[SEAL.] (Signed) EDWARD F. BISHOP, *Clerk.*

Proof of Service.

THE UNITED STATES OF AMERICA, } ss:
District of Colorado, }

DENVER, *Oct. 6th, A. D.* 1883.

I hereby certify that I received the within writ on the 1st day of October, A. D. 1883, and that I have personally served the same upon the said defendant, Howard C. Chapin, by delivering to him personally a true copy of the within writ at Leadville, county
65 of Lake, on the 3rd day of October, A. D. 1883.

This writ [is] therefore returned, executed as the law directs, this 6th day of October, A. D. 1883.

(S'g'd) W. A. SMITH, *Marshal.*

(Endorsed:) Gen. No. 1328. Circuit court of the United States for the district of Colorado. James Streeter, plaintiff, *versus* Howard C. Chapin, defendant. Summons. Filed this 6 day of Oct., A. D. 1883. (S'g'd) Edward F. Bishop, clerk, by F. W. Tupper, deputy clerk. Parsons & Walling, of Leadville, attorneys for plaintiff.

And afterwards and on, to wit, the 12th day of November, A. D. 1883, came the said defendant, by Clinton Reed, Esq., his attorney, and filed in said court and in said cause his answer to the complaint heretofore filed herein; and the said answer is in words and figures as follows, to wit:

Answer missing from files this 18th day of December, A. D. 1884.

Copy of answer filed by stipulation December 31st, A. D. 1884.

And afterwards and on, to wit, the 8th day of December, A. D. 1883, the same being one of the regular juridical days of the
66 October term, A. D. 1883, of said court—present, the Honorable Moses Hallett, district judge—the following proceeding was had and entered of record in said court and in said cause, to wit:

Order. Motion to Strike Out Answer Denied.

JAMES STREETER
vs. } 1328.
HOWARD C. CHAPIN.

Money demand.

At this day comes the said plaintiff, by C. C. Parsons, Esq., his attorney, and the said defendant, by Clinton Reed, Esq., his attorney, also comes.

And the motion of the said plaintiff to strike the answer herein from the files and for judgment coming on now to be heard is argued by counsel, and the court being now sufficiently advised in the premises—

It is ordered by the court, for good and sufficient reasons to the court appearing, that the said motion be denied.

And thereupon, on motion of the said plaintiff, it is ordered that he have leave to reply herein as he shall be advised.

And thereupon and on the same day, to wit, the 8th day of December, A. D. 1883, the following further proceeding was had and entered of record in said court and in said cause, to wit:

67 *Order. Replication to Stand in Consolidated Case.*

JAMES STREETER
vs
HOWARD C. *Parsons.* } 1278.

Money demand.

At this day comes the said plaintiff, by C. C. Parsons, Esq., his attorney, and the said defendant, by Clinton Reed, Esq., his attorney, also comes.

And thereupon, on motion of the said plaintiff, it is ordered by the court that the replication lately filed herein stand, as well as replication to the answer in cause numbered 1328, consolidated this day with this said cause.

And thereupon, on the same day, to wit, the 8th day of December, A. D. 1883, the following further proceeding was had and entered of record in said court and in said cause, to wit:

Order. Trial and Judgment.

JAMES STREETER
vs.
HOWARD C. CHAPIN. } 1278.

Money demand.

At this day comes the said plaintiff, by C. C. Parsons, Esq., his attorney, and the said defendant, by Clinton Reed, Esq., his attorney, also comes.

68 And thereupon comes a jury, to wit, 1, John Tomay; 2, Frank G. Willard; 3, William A. Hoyt; 4, Edward J. Salderlin; 5, John D. Rankin; 6, N. C. Alford; 7, John B. Ballard; 8, John R. Hanna; 9, W. R. Thomas; 10, James Dunbar; 11, George W. Harriman; 12, John Shea, twelve good and lawful men, and they are duly selected and tried, impaneled and sworn, to well and truly try the issues herein joined, and a true verdict render according to the evidence.

And the said jurrors, having heard the evidence produced herein and the instructions of the court, upon their oaths do say they find the issues herein joined for the said plaintiff, and assess the damages at seven thousand one hundred and thirteen dollars and forty-four cents ($7,113.44).

Wherefore, on motion of the said plaintiff, it is ordered by the court that judgment be entered herein upon the verdict of the jury in favor of the said plaintiff and against the said defendant for

seven thousand one hundred and thirteen dollars and forty-four cents ($7,113.44) and the said plaintiff's costs, to be taxed.

And thereupon, and on the same day, to wit, the 8th day of December, A. D. 1883, judgment was duly entered against the said defendant in the judgment-book of said court, in pursuance of the statutes and rules of court; and the said judgment is in words and figures as follows, to wit:

69 *Judgment.*

JAMES STREETER
vs.
HOWARD C. CHAPIN. } 1278.

Money demand.

On this 8th day of December, A. D. 1883, the same being one of the regular juridical days of the October term, A. D. 1883, of said court, there being present the Honorable Moses Hallett, district judge—

It is considered by the court that the said plaintiff do have and recover of and from the said defendant seven thousand one hundred and thirteen dollars and forty-four cents ($8,113.44), his damages by occasion of the premises in his complaint mentioned, in form aforesaid assessed, and his costs by him in this behalf laid out and expended, to be taxed, and have execution therefor.

And afterwards and on, to wit, the 17th day of December, A. D. 1883, came again the said defendant, by his attorneys aforesaid, and filed in said court and in said cause his bond on writ of error to the Supreme Court of the United States; and the said bond is in words and figures as follows, to wit:

Bond on Writ of Error.

70 THE UNITED STATES OF AMERICA, *District of Colorado:*

Know all men by these presents that Howard C. Chapin, as principal, and H. A. W. Tabor & Jacob F. Sanders, as surety, are held and firmly bound unto James Streeter in the full and just sum of fourteen thousand two hundred twenty-six $\frac{88}{100}$ dollars, to be paid to the said James Streeter; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 15th day of December, in the year of our Lord one thousand eight hundred and eighty-three.

Whereas lately at the October term, A. D. 1883, of the circuit court of the United States for the district of Colorado, in a suit pending in said court between James Streeter, as plaintiff, and Howard C. Chapin, as defendant, judgment was rendered against the said Howard C. Chapin for the sum of seven thousand one hundred and thirteen dollars forty-four cents, — having obtained a writ of error and a citation directed to James Streeter, citing and admonishing

him to be and appear at a Supreme Court of the United States, to be held at Washington, D. C., on the thirteenth day of October, 1884, next:

Now the condition of the above obligation is such that if
71 the said Howard C. Chapin shall prosecute said writ of error to effect and answer all damages and costs if he fails to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

(S'g'd) HOWARD C. CHAPIN. [SEAL.]
H. A. W. TABOR. [SEAL.]
J. F. SANDERS. [SEAL.]

Approved Dec. 17, 1883.
(S'g'd) MOSES HALLETT, *Judge.*

Justification.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

Horace A. W. Tabor [and] —— ——, sureties on the within bond, being each first duly sworn, deposes and saith that he is worth in real estate the sum below set opposite to his name—that is to say, as to Horace A. W. Tabor, fifty thousand dollars; as to Jacob F. Sanders, five thousand dollars—over and above all his just debts and liabilities, and in property subject to levy and sale upon execution.

(S'g'd) HORACE A. W. TABOR.
J. F. SANDERS.

As to Tabor: Subscribed and sworn to before me, at Denver, this 14th day of Dec'r, A. D. 1883.

[Seal Dist. C't U. S.]

(S'g'd) EDWARD F. BISHOP,
72 *Clerk District Court U. S.*

As to Sanders: Subscribed and sworn to before me this 17th day of Dec'r, A. D. 1883.

[Seal Dist. C't U. S.]

(S'g'd) EDWARD F. BISHOP, *Clerk.*
By F. W. TUPPER, *Deputy Clerk.*

(Endorsed:) Gen. No. 1278. Circuit court of the United States, district of Colorado. James Streeter *vs.* Howard C. Chapin. Bond by def't on writ of error, $14,226.88. Filed this 17 day of Dec., A. D. 1883. (S'g'd) Edward F. Bishop, clerk.

And afterwards and on, to wit, the 9th day of January, A. D. 1884, came again the said defendant, by his attorney aforesaid, and sued out of said court a citation and writ of error to the Supreme Court of the United States, and the said citation is hereto attached, to wit:

Citation.

73 THE UNITED STATES OF AMERICA, *District of Colorado:*

The United States of America to James Streeter, defendant in error, and to Messrs. Parsons and Walling, his attorneys, Greeting:

You are hereby cited and admonished to be and appear at a term of the Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eighth circuit & district of Colorado, wherein Howard C. Chapin is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Moses Hallett, judge of the circuit court of the United States for the district of Colorado, this 9 day of Jan'y, in the year of our Lord one thousand eight hundred and eighty-four.

MOSES HALLETT, *Judge.*

74 [Endorsed:] Gen. No. 1278. Circuit court of the United States, district of Colorado. Howard C. Chapin, plaintiff in error, *vs.* James Streeter, defendant in error. Citation. Filed in circuit court of the U. S. this 9 day of Jan'y, A. D. 1884. Edward F. Bishop, clerk. Belford, Reed & Rockwell, attorneys for plaintiff in error.

Proof of Service.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

Service of the within acknowledged this 10th day of January, 1884.

PARSONS & WALLING,
Attorneys for Plaintiff.

75 And the said writ of error is hereto attached, to wit:

76 *Writ of Error to — Court U. S., District of Colorado.*

UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

The President of the United States to the judge of the circuit court of the United States for the district of Colorado, Greeting:

Because in the record and proceedings as also in the rendition of the judgment of a plea which is in the said circuit court, between James Streeter, plaintiff, and Howard C. Chapin, defendant, a manifest error hath happened, to the great damage of the said Howard C. Chapin, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you,

if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, in the District of Columbia, on the thirteenth day of October next, A. D. 1884, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 9th day of January, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the 108th year.

[Seal United States Circuit Court, District of Colorado.]

EDWARD F. BISHOP, *Clerk.*

Allowed by—
MOSES HALLETT,
Dist. Judge.

77 [Endorsed:] Gen. No. 1278. Circuit court of the United States. Howard C. Chapin, plaintiff in error, *vs.* James Streeter. Writ of error to circuit court, U. S., district of Colorado. Filed in circuit court of the U. S. this 9 day of Jan'y, A. D. 1884. Edward F. Bishop, clerk. Belford, Reed & Rockwell, attorneys for plaintiff in error.

Return.

THE UNITED STATES OF AMERICA, *District of Colorado,* } *ss:*

In obedience to the command of the within writ I herewith transmit to the honorable Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, together with all things concerning the same.

Witness my hand and the seal of said circuit court, at Denver, in said district, this second day of January, A. D. 1885.

[Seal United States Circuit Court, District of Colorado.]

EDWARD F. BISHOP, *Clerk.*

The within-named plaintiff in error having complied with section 1007, U. S. R. S., this writ is therefore a supersedeas.

Teste: EDWARD F. BISHOP,
Clerk, &c.

78 And afterwards and on, to wit, the 21st day of January, A. D. 1884, came again the said defendant, by his attorneys aforesaid, and filed in said court and in said cause his bill of exceptions reseved by him upon the trial of the issues herein joined; and the said bill of exceptions is in words and figures as follows, to wit:

Bill of Exceptions.

UNITED STATES OF AMERICA, }
District of Colorado, } ss:

In the Circuit Court of the United States, in the Eighth Judicial Circuit, in and for said District.

JAMES STREETER, Plaintiff, *vs.* HOWARD C. CHAPIN, Defendant.

Be it remembered that on the trial of the above-entitled cause the plaintiff introduced evidence showing that in the years 1880 and 1881 the plaintiff and defendant were copartners in the business of keeping the Clarenden hotel, in Leadville, Lake county, Colorado, each owning an undivided one-half of the hotel and the
79 furniture and personal property therein; that said copartnership continued until the 31st day of October, 1881, at which time it was dissolved, and the said defendant rented of the said plaintiff the undivided one-half of said hotel and furniture and personal property therein for the term of two years from the 1st day of November, 1881.

Said plaintiff also introduced in evidence the written contract of lease of said undivided one-half of said premises and furniture, by which it was provided that the defendant should pay, as rental of said undivided one-half of said premises and furniture, at the rate of ten thousand dollars for the first year and eight thousand dollars for the second year; that at the time of the trial of this cause there remained due and unpaid on said lease, for rent and interest on the several installments as they became due, the sum of seven thousand one hundred and thirteen dollars and forty-four cents.

Which was all the evidence introduced on the part of the plaintiff.

And be it further remembered that on the trial of said cause said defendant introduced evidence showing that plaintiff and defendant, on the 1st day of May, 1882, were indebted to the said county of Lake, for taxes assessed against them on their joint property, to wit, the said hotel property and furniture, for the years 1880 and 1881, the sum of six hundred and thirty dollars.

80 That, to satisfy the sum of three hundred and fifteen dollars of said taxes and the costs of sale, the treasurer of said Lake county distrained, advertised, and sold the undivided one-half of the furniture and other personal property in and about the said hotel, owned by the said Streeter and Chapin jointly.

And the evidence also showed that said Streeter was at the time of such distraint and sale indebted to said county of Lake in the sum of four hundred and fifty-two and $\frac{30}{100}$ dollars for taxes assessed for the years 1880 and 1881; but the court held that such fact would not avail the defendant as a defense, for the reason that the levy & sale hereinafter mentioned was not made on account of that tax.

That at such sale one John W. Jacque purchased the said undivided one-half of said furniture and other personal property in and about said hotel, owned by the said Streeter and Chapin jointly, for

the sum of one hundred and six dollars, which was paid by the said Jacque to the said treasurer.

And it further appeared from the evidence that previous to such distraint and sale the said Chapin, defendant, had paid to said treasurer the one-half of said six hundred and thirty dollars, taxes assessed against such joint property.

Said defendant also introduced in evidence the assessment-roll tax-list and warrant attached thereto, directing the treasurer of said
81 Lake county to collect the taxes in said list by the sale of the property of the persons against whom said taxes were assessed, which tax-list and warrant were in due form, and authorized the said treasurer to collect by distraint and sale the taxes therein assessed.

Said defendant also introduced evidence to prove that the said treasurer of Lake county, on the 10th day of May, 1882, posted, at five public places in the city of Leadville, in said county, to wit, one at the Merchants' and Mechanics' Bank, one on the front door of the Clarendon Hotel, one in front of Chas. Boettcher's store, one on the court-house, and one at the corner of Harrison avenue and Sixth street, a notice of sale, which said several notices remained and continued so posted until and during the 16th day of May, 1882, and were in the words and figures following, to wit:

STATE OF COLORADO, } *88:*
County of Lake, }

Notice is hereby given that I, John Hayes, treasurer of Lake county, Colorado, by the power and authority in me vested, and in accordance with the laws made and provided for the collection of delinquent personal taxes, do hereby give notice that I have distrained the personal property of James Streeter, and will sell the
82 same on the sixteenth day of May, A. D. 1882, at 10 o'clock a. m. of said day, at the Clarendon hotel, Harrison Ave., in the city of Leadville, county of Lake, and State of Colorado, to the highest and best bidder, for cash, the following described personal property, or so much thereof as will be necessary to satisfy the sum of three hundred and fifteen $\frac{20}{100}$ dollars, delinquent taxes for the years A. D. 1880 & 1881, and interest to the amount of sixty-six & $\frac{24}{100}$ dollars, and the necessary costs of this sale, an individual half interest in the following described property, to wit: The furniture of 65 bed-rooms in Clarendon hotel, consisting of beds and bedding, chairs, washstands, bureaus, and carpets in each room; also the furniture of 32 bed-rooms in Tabor Opera House building, on upper floor, of same description as above; 3 billiard tables and fixtures; bar and bar fixtures; one safe, one office stove, office chairs, one show-case; carpets on all the rooms & halls; a lot of glassware, crockeryware, silverware, and table cutlery; kitchen range and kitchen furniture; laundry range and fixtures; a lot of lamps and chandeliers, and all the other personal property of said James Streeter in Clarendon hotel and Tabor Opera House, all the above-described property

being situated in the county of Lake county and State of Colorado.
Dated at Leadville this tenth day of May, A. D. 1882.

JOHN HAYES, *Treasurer*,
By P. J. QUIGLEY,
Dep. Treas.

83 And defendant further introduced evidence showing that the rental value of the undivided one-half of the personal property so sold was three hundred dollars per month; that said defendant rented the said undivided one-half of said personal property from the said John W. Jacques at the rate of two hundred and seventy-five dollars per month; that from the time of such sale until the rent accrued for which this suit was brought the total value of the rent for the said undivided one-half of said personal property amounted to the sum of five thousand seven hundred and seventy-five dollars.

That said defendant, to further maintain his defense, when upon the stand was asked the following question: "State whether Mr. Streeter ever gave you any instructions or directions not to pay, as a member of the firm or as joint owner of this property, any portion of the taxes or his half of the taxes upon his one-half of the goods."

To the asking of which question the plaintiff, by his counsel, objected; which objection was by the court sustained; to the sustaining of which objection the defendant, by his counsel, then and there excepted.

And thereupon counsel for said defendant made the following offer of proof: "The defendant here offers to prove by the witness on the stand that Mr. Streeter, the plaintiff, had frequently,
84 prior to the sale of this property for taxes, notified Mr. Chapin, the defendant, not to pay any taxes on his part of the property owned by them in common, either real or personal, and had declared that if he did pay such taxes on his half of the property he would not allow it to him in their transactions as partners, nor would he pay it to him."

But the court refused to allow the defendant to prove said facts; to which ruling of the court said defendant, by his counsel, then and there excepted.

And the said defendant, to further maintain his defense, offered in evidence the partnership agreement between the said plaintiff and defendant, entered into prior to the assessment and levy of the said taxes, and under which agreement the said plaintiff and defendant had carried on business up to the time of the dissolution aforesaid. The said agreement was offered for the purpose of getting in evidence the following stipulation therein contained:

"It is understood that no improvement shall be made on said hotel without the concurrence of both parties; and the expenses of all improvements so made, and all other necessary expenses in regard to the property used by said firm under this agreement or within the scope of said partnership shall be borne equally by each party."

Which said words were admitted in evidence.

And the above and foregoing was all the evidence offered on the part of said defendant.

And thereupon the plaintiff offered to produce the record
85 of the former trial of case No. 1049, claiming it to be a suit between the same parties, where the same defense is set up to the cause of action accruing on the same contract of lease. But the court refused to admit the same.

Thereupon the court charged the jury as follows:

"GENTLEMEN: We exclude the defense here on the ground that the sale was irregular, not made as required by law. There is no dispute as to the amount due upon the lease. The defendant was seeking to show that this property was sold and bought by Mr. Jacque, to whom he became liable for half the rent that would be due for the use of the property, but as the sale was held to be irregular and void that defense fails, and the question recurs upon the amount due upon the lease. The defendant is going to contest the defense interposed by him in the Supreme Court, so it became necessary that you should hear this evidence, although they had the question up in another case. The amount claimed by the plaintiff is seven thousand one hundred and thirteen dollars and forty cents; we will enter your verdict for that amount. You will be excused from further attendance in this cause."

To the giving of so much of said charge of the court as excludes the defense of the defendant and declares the sale for taxes irregular and void, and directs a verdict for the plaintiff, the defendant, by his counsel, then and there excepted.

86 And forasmuch as the matters above set forth do not fully appear of record, the defendant tenders this his bill of exceptions and prays that the same may be signed and sealed by the judge of this court, pursuant to the statute in such case made.

Which is accordingly done this 21st day of January, 1884.

(S'g'd) MOSES HALLET, [SEAL.]
Dis't Judge.

Endorsed: No. 1278. Circuit court U. S. James Streeter *vs.* Howard C. Chapin. Bill of exceptions. Filed Jan. 21, 1884. (S'g'd) Edward F. Bishop, clerk.

87 And afterwards and on, to wit, the 31st day of December, A. D. 1884, came again the said defendant, by his attorney aforesaid, and filed in said court and in said cause a certain stipulation as to filing copy of answer; and the said stipulation is in words and figures as follows, to wit:

Stipulation as to Filing Copy of Lost Answer.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit [Court] of the United [States] for the District of Colorado.

JAMES STREETER, Pl'ff, *vs.* HOWARD C. CHAPIN, Def't.

It is hereby stipulated that the copy of answer, herewith filed and verified as a copy of the original answer by the affidavit of Wm. E. Hugo, may be filed as a substitute for the original.

(S'g'd) CLINTON REED,
Att'y for Def't.
PARSONS & WALLING,
Att'ys for Plaintiff.

Endorsed: 1328. James Streeter *vs.* Howard C. Chapin. Stipulation as to filing copy of answer. Filed Dec. 31, 1884. (S'g'd) Edward F. Bishop, clerk. C. Reed, att'y for def't.

88 And thereupon and on the same day came again the said defendant, by his attorney aforesaid, and filed in said court and said cause a copy of the answer heretofore filed herein, and the said copy of answer is in words and figures as follows, to wit:

Copy of Answer.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

In the Circuit Court of the United States for the District of Colorado.

JAMES STREETER, Plaintiff, *vs.* HOWARD C. CHAPIN, Defendant.

Now comes the said defendant, by Belford & Reed, his attorneys, and for answer to the complaint of the plaintiff filed, says:

1st. That as to whether the said plaintiff is a citizen of the State of Kansas this defendant has not and cannot obtain sufficient information upon which to base a belief.

2nd. Defendant admits that he entered into the contract with the plaintiff substantially as alleged in said complaint, but denies that at the time of the commencement of this suit there was due from the defendant to the plaintiff the sum of one thousand three
89 hundred and thirty-three and one-third dollars, or any sum of money whatever, or any interest thereon, as alleged in said complaint, or at all.

3d. For a second and further defense the defendant alleges, and charges the fact to be, that the agreement and lease mentioned in said complaint was an agreement of lease of an undivided one-half of the "Clarendon hotel," and also for the undivided one-half of the furniture and fixtures of the said Clarendon hotel, and the undivided one-half of all the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with and as part of

said Clarendon hotel, all of said property being situate in the city of Leadville, Lake county, Colorado.

That upon the execution of the said agreement of lease defendant took possession of said undivided one-half of the property known as the Clarendon hotel, and of the furniture and fixtures hereinbefore mentioned, and held the quiet, peaceable, and exclusive possession thereof until the 10th day of May, 1882, enjoying the use thereof as was contemplated in and by said agreement of lease.

Defendant further alleges that on the 1st day of January, 1882, the plaintiff, James Streeter, was indebted to the county of Lake, in the State of Colorado, in a large sum of money, to wit, in the
90 sum of $4,025, for taxes assessed upon the property owned by said plaintiff for the years 1880 and 1881, and which said taxes, on the 10th day of May, 1882, were due and unpaid; that on said 10th day of May, 1882, one John Hays, who was at that time the duly qualified and acting treasurer of the county of Lake, State of Colorado, distrained and levied upon all of the said undivided one-half of the furniture and fixtures of the said Clarendon hotel, and of the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with said Clarendon hotel, as hereinbefore described, for the purpose of collecting the delinquent taxes due from the plaintiff as aforesaid for the years 1880 and 1881, and interest thereon and the necessary costs of sale.

And the said John Hays, as treasurer as aforesaid, did then and there distrain, levy upon, and seize the said undivided one-half part of the said property mentioned in said lease owned by said plaintiff and leased to this defendant as aforesaid, except the real estate therein mentioned, to wit, lots numbered 10, 11, and 12, in block number 1, in the Leadville Improvement Company's addition to the town, now city, of Leadville, and the improvements thereon, and did then and there, as treasurer of said Lake county, advertise, in the same manner as constables are required to advertise by law the sales of personal property under execution from justices' courts in Colorado, that he would sell the said property so
91 seized as aforesaid, or so much thereof as would be necessary to satisfy the sum of three hundred and fifteen dollars and ninety cents, delinquent taxes due from the plaintiff for the year 1880 and the year 1881, and interest thereon, to wit, sixty-six dollars and twenty-four cents, and also the necessary costs of sale, upon the 16th day of May, 1882, at the hour of ten o'clock a. m. of said day, at the Clarendon hotel, upon Harrison avenue, in the city of Leadville, in Lake county, State of Colorado, to the highest and best bidder, for cash.

Defendant further alleges that afterwards, and on the said 17th day of May, 1882, at the hour of 10 o'clock a. m. of that day, the said John Hays, treasurer as aforesaid, did then and there, in the presence of the said property, proceed to sell the same to the highest and best bidder, for cash, and then and there sold the same to one John W. Jacque for the sum of one hundred and six dollars, the said John W. Jacque being the highest and best bidder for the same, and the possession of the one undivided half of said property was

then delivered by the said John Hays, as such treasurer, to the said John W. Jacque, by reason whereof this defendant was deprived of the use and enjoyment of the said undivided one-half of the said property, furniture, and fixtures to which he was entitled under and by virtue of said lease.

And this defendant alleges that he has been damaged by the sale of the said undivided half of said furniture and chattels so
92 leased to him as aforesaid in a large sum of money, to wit, in the sum of five thousand dollars, money by him laid out and expended for the purpose of retaining and using said furniture during the term for which the same was leased.

4th. And for a third and further defense this defendant alleges and charges the fact to be that the agreement of lease mentioned in the complaint was an agreement of lease of an undivided one-half of the Clarendon hotel, and also for the undivided one-half part of the furniture and fixtures of the said Clarendon hotel, and the undivided one-half part of the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with and as part of the said Clarendon hotel, all of said property being situated in the city of Leadville, Lake county, Colorado.

And defendant alleges that upon the execution of said agreement of lease he took possession of said property known as the Clarendon hotel and of the said furniture and fixtures, and kept and held the same until the 10th day of May, 1882, enjoying the use thereof, as was contemplated in and by the said agreement of lease.

And defendant further alleges that there was assessed and levied upon the whole of said furniture and property mentioned in said lease, as taxes for the years 1880 and 1881, the sum of six hundred and thirty-one dollars and eighty cents; that said
93 property, at the time said assessment was made, was owned by this defendant and said plaintiff jointly, each owning the undivided one-half of, in, and to the same; that the same was assessed to Streeter and Chapin in the name of "Streeter & Chapin" and said Chapin (defendant herein) paid to the treasurer of said Lake county, Colorado, one-half of the said taxes so assessed against said property, and was by the treasurer fully discharged from all claims for taxes on said property for said years of 1880 and 1881.

Defendant further says that he often requested the said plaintiff to pay his half of the taxes so assessed, but that the said Streeter refused so to do, and repeatedly declared to defendant that he never would in any manner pay half of said taxes, and notified defendant that he would never allow or repay him any part of said taxes if said defendant should pay them; that plaintiff made the said declaration to this defendant prior to the execution of said lease, and while they were in partnership of keeping said hotel, and also after the dissolution of said partnership and the executing of said lease by said plaintiff.

And defendant alleges that on, to wit, the 10th day of May, 1882, one John Hays, who was at that time the duly qualified and acting treasurer of the county of Lake, in the State of Colorado, distrained and levied upon said Streeter's undivided one-half part of the

94 furniture and fixtures of the said Clarendon hotel and of the furniture and fixtures in the rooms in the Tabor Opera House used and occupied in connection with the said Clarendon hotel, as hereinbefore described, for the purpose of collecting the delinquent taxes due from the plaintiff as aforesaid for said property for the years 1880 and 1881 and the interest thereon and necessary costs of sale; and the said John Hayes, treasurer as aforesaid, did then and there distrain, levy upon, and seize the undivided one-half part of the said property, to wit, the undivided one-half part of all the property mentioned and described in the said lease, except the real estate therein mentioned, to wit, lots numbered 10, 11, and 12, in block numbered 1, in the Leadville Improvement Company's addition to the town (now city) of Leadville, and the improvements thereon, and did then and there as treasurer of said Lake county advertise, in the same manner as constables are required to advertise by law the sale of personal property under execution from justices' courts in the State of Colorado, that he would sell the said property, or so much thereof as would be necessary to satisfy the sum of three hundred and fifteen dollars and ninety cents, delinquent taxes due from the plaintiff for the years 1880 and 1881, and interest thereon, to wit, sixty-six dollars and twenty-four cents, and also the necessary costs of sale, upon, to wit, the 16th day of May, 1882, at the hour of 10 o'clock a. m. of said day, at the Clarendon hotel, upon Har-
95 rison avenue, in the city of Leadville, in Lake county, State of Colorado, to the highest and best bidder, for cash.

Defendant further alleges that afterwards and on the said 16th day of May, 1882, at the hour of 10 o'clock a. m. of that day, the said John Hays, treasurer as aforesaid, did then and there, in the presence of the said property, proceed to sell the same to the highest and best bidder, for cash, and then and there sold the same to one John W. Jacque for the sum of one hundred and six dollars, the said John W. Jacque being the highest and best bidder for the same, and the possession of the said undivided one-half of said property was then delivered by said treasurer to the said John W. Jacque. By reason whereof this defendant was deprived of the use and enjoyment of the said undivided one-half of said property, fixtures, and furniture, to which he was entitled under and by virtue of said lease.

And defendant alleges that he has been damaged by the sale of said undivided one-half of said furniture and chattels so leased to him as aforesaid in a large sum of money, to wit, in the sum of five thousand dollars—money by him paid out and expended for the purpose of retaining and using said furniture during the term for which the same was leased.

Wherefore defendant prays judgment for his costs.

96 (S'g'd) BELFORD & REED,
Attorneys for Defendant.

STATE OF COLORADO, } *ss:*
County of Lake, }

Howard C. Chapin, being first duly sworn, on his oath deposes and says that he is the defendant in the above-entitled cause; that

he has read the foregoing complaint and knows the contents thereof, and that the same is true to his own knowledge, except the matters and things therein stated on information and belief, and as to those matters and things he believes it to be true.

—— ——.

Subscribed and sworn to before me this 9th day of November, 1883.

—— ——.

STATE OF COLORADO, } ss:
County of Lake, }

Wm. E. Hugo, being first duly sworn, on his oath deposes and says that he is a clerk in the office of Clinton Reed, attorney-at-law, in the city of Leadville, Colorado; that he printed upon a typewriting machine the answer that was filed in the case of James Streeter *vs.* Howard C. Chapin pending in the United States circuit court at Denver and numbered No. 1328, and that the copy of said answer hereto attached is a true, complete duplicate copy of said answer, and made at the same time that said answer was
97 made, the original and copy being made and printed at one and the same time.

(S'g'd) WM. ELIOT HUGO.

Subscribed and sworn to before me this 23rd day of December.
[NOTARIAL SEAL.] (S'g'd) CHAS. A. HINCKLEY,
Notary Public.

Endorsed: 1328. James Streeter *vs.* Howard C. Chapin. Answer. Filed Dec. 31, 1884. (S'g'd) Edward F. Bishop, clerk.

UNITED STATES OF AMERICA, } ss:
District of Colorado, }

I, Edward F. Bishop, clerk of the circuit court of the United States for the district of Colorado, sitting at Denver, do hereby certify the above and foregoing to be a true, perfect, and complete transcript and copy of the record and proceedings heretofore had and entered of record or filed in said court and in a certain cause lately in said court pending, wherein James Streeter was plaintiff and Howard C. Chapin was defendant, as fully and completely as the same still remain on file or of record in my office.

In testimony to the above I do hereunto sign my name and affix the seal of said court, at Denver, in said district, this second day of January, A. D. 1885.

[Seal United States Circuit Court, District of Colorado.]

EDWARD F. BISHOP, *Clerk,*
By CHAS. W. BISHOP, *Deputy Clerk.*

Endorsed on cover: Colorado C. C. U. S. No. 516. Howard C. Chapin, plaintiff in error, *vs.* James Streeter. Filed April 27, 1885.